

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/595,243 Conf. No.: 5442
Inventor: George Brock-Fisher
Filed: March 29, 2006
TC/AU: 2614
Examiner: Joseph T. Phan
Docket No.: PHUS030422US2 (PHC-10-6761)
Customer No.: 38107

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

June 25, 2010

APPEAL BRIEF

Dear Sir:

Attached herewith is an Appeal Brief pursuant to 35 U.S.C. §134 and 37 C.F.R. §41.37 for the above-identified patent application in support of a Notice of Appeal filed with the United States Patent and Trademark Office on May 5, 2010.

TABLE OF CONTENTS

I.	REAL PARTY IN INTEREST	3
II.	RELATED APPEALS AND INTERFERENCES	3
III.	STATUS OF THE CLAIMS	3
IV.	STATUS OF AMENDMENTS.....	3
V.	SUMMARY OF THE CLAIMED SUBJECT MATTER	3
VI.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL	5
VII.	ARGUMENTS	6
VIII.	CLAIM APPENDIX	11
IX.	EVIDENCE APPENDIX	15
X.	RELATED PROCEEDINGS APPENDIX.....	16

I. REAL PARTY IN INTEREST

The real party in interest in the above-entitled application is Koninklijke Philips Electronics N.V., Eindhoven, NL.

II. RELATED APPEALS AND INTERFERENCES

The undersigned attorney/agent, the appellant, and the assignee are not aware of any related appeals or interferences that would directly affect, or be directly affected by, or have a bearing on the Board's decision in this pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-22 are pending and are all on appeal. Claims 1-22 stand rejected. Claims 1-17 were amended, and claims 18-22 were added during prosecution.

IV. STATUS OF AMENDMENTS

No after final amendments have been submitted.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

With respect to claim 1, a portable medical monitoring apparatus includes a portable monitoring device for medically monitoring to detect an occurrence of a predefined abnormal condition. (See page 2, lines 13-18 and 30-33; page 3, lines 21-27; and page 4, line 5-11). The apparatus further includes a wireless transmitter attached to the device and configured for automatically, wirelessly and directly communicating the occurrence to a portable phone upon detection by the device of said occurrence, the phone being configured to make an emergency call upon receiving the communication by dialing a phone number of a phone belonging to a designated individual. (See page 2, lines 4-6; page 3, lines 4-5 and lines 28-31; and page 5, lines 18-20).

With respect to claim 5, which indirectly depends from claim 1, the phone is further configured to play a pre-recorded message for the designated individual on the call when the call is answered. (See page 5, lines 3-11).

With respect to claim 6, a portable medical monitoring system includes a portable monitoring apparatus for medically monitoring to detect an occurrence of a predefined abnormal condition. (See page 2, lines 13-18 and 30-33; page 3, lines 21-27; and page 4, line 5-11). The system further includes a portable phone having an automatic dialer and configured to, upon detecting of said occurrence by said apparatus, activate the automatic dialer to call a phone number of a phone belonging to a designated individual until the designated individual personally answers the call, the phone being further configured to play a pre-recorded message for the designated individual on the call when the call is answered. (See page 2, lines 4-6; page 3, lines 4-5 and lines 28-31; and page 5, lines 3-9 and 18-20).

With respect to claim 12, a portable medical monitoring method includes medically monitoring, with a portable monitoring device, to detect an occurrence of a predefined abnormal condition. (See page 2, lines 13-18 and 30-33; page 3, lines 21-27; and page 4, line 5-11). The method further includes automatically, wirelessly and directly communicating, by a wireless transmitter attached to the device, the occurrence to a portable phone upon detection by the device of said occurrence. (See page 3, lines 4-5; and page 3, lines 28-31). The method further includes making, by said phone, an emergency call upon receiving the communication by dialing phone numbers stored in the phone, each of the phone numbers being associated with a phone belonging to a designated individual, until one of the designated individuals personally answers the call. (See page 2, lines 4-6; and page 5, lines 3-9 and 18-20).

With respect to claim 14, the call making step comprises the step of playing, by said phone, a pre-recorded message for the designated individual that answered the call on the call when the call is answered. (See page 5, lines 3-11).

With respect to claim 15, a portable medical monitoring method includes medically monitoring, by a portable medical monitoring apparatus, to detect an occurrence of a predefined abnormal condition. (See page 2, lines 13-18 and 30-33; page 3, lines 21-27; and page 4, line 5-11). The method further includes upon detecting of said occurrence by said apparatus, activating an automatic dialer in a phone to call phone numbers stored in the phone, each of the phone numbers being associated with a phone belonging to a designated individual. (See page 2, lines 4-6; and page 5, lines 3-9 and 18-20). The method further includes playing, by said phone, a pre-recorded message for the designated individual that answers the call on the call when the call is answered. (See page 5, lines 3-11).

With respect to claim 18, a portable medical monitoring apparatus includes a portable monitoring device for monitoring one or more medical conditions for the occurrence of one or more predefined abnormal conditions. (See page 2, lines 13-18 and 30-33; page 3, lines 21-27; and page 4, line 5-11). The apparatus further includes a portable communication device for receiving a signal from the portable monitoring device that one of the predefined abnormal conditions has occurred, wherein the portable communication device relays the occurrence of the predefined abnormal condition by establishing a connection to selected emergency contact individuals and providing to the emergency contact individuals a notification of the occurrence of the abnormal condition that has occurred and a location of the portable monitoring device. (See page 2, lines 4-6; and page 5, lines 3-9 and 18-20).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-22 are unpatentable under 35 U.S.C. §102(e) over Fu et al. (US 2002/0169584 A1).

VII. ARGUMENTS

A. Rejection of Claims 1-22 Under 35 U.S.C. §102(e)

Claims 1-22 stand rejected under 35 U.S.C. 102(e) as being anticipated by Fu et al. The rejection of claims 1-22 should be reversed because the Office has failed to establish a *prima facie* case of anticipation with respect to the subject claims and Fu et al. does not anticipate the subject claims.

Independent **claim 1** is directed towards a portable medical monitoring apparatus that includes a portable monitoring device for medically monitoring to detect an occurrence of a predefined abnormal condition, and a wireless transmitter attached to the device and configured for automatically, wirelessly and directly communicating the occurrence to a portable phone upon detection by the device of said occurrence, the phone being configured to make an emergency call upon receiving the communication *by dialing a phone number of a phone belonging to a designated individual*.

The final Office does not establish a *prima facie* case of anticipation with respect to claim 1 because the subject Office Action does not address the above-emphasized claim aspect. To establish a *prima facie* case of anticipation, the Office must explain how the rejected claims are anticipated by pointing out where the specific limitations of the claims are found in the prior art. *Ex Parte Naoya Isoda*, Appeal No. 2005-2289, Application 10/064,508 (Bd. Pat. App. & Inter. 2005). The goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity. (MPEP §706). Here, the Office did not address the subject claim limitation.

In addition, Fu et al. does not anticipate claim 1 because Fu et al. does not teach or suggest the above-emphasized claim aspect. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (See MPEP §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*,

814 F.2d 628, 631 (Fed. Cir. 1987)). Fu et al. does not disclose a phone configured to make an emergency call upon receiving the communication *by dialing a phone number of a phone belonging to a designated individual*, as recited in claim 1. Instead, Fu et al. discloses communicating recorded monitored information to a wireless device that forwards the information to a health monitor server. Thus, Fu et al. does not teach each and every element as set forth in the claim 1.

In view of the foregoing, this rejection should be reversed.

Claim 5, which indirectly depends from claim 1 recites that the phone is configured to play a pre-recorded message *for the designated individual* on the call when the call is answered.

The final Office does not establish a *prima facie* case of anticipation with respect to claim 5 because the subject Office Action does not address the above-emphasized claim aspect. To establish a *prima facie* case of anticipation, the Office must explain how the rejected claims are anticipated by pointing out where the specific limitations of the claims are found in the prior art. *Ex Parte Naoya Isoda*, Appeal No. 2005-2289, Application 10/064,508 (Bd. Pat. App. & Inter. 2005). The goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity. (MPEP §706). Here, the Office did not address the subject claim limitation.

In addition, Fu et al. does not anticipate claim 5 because Fu et al. does not teach or suggest the above-emphasized claim aspect. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (See MPEP §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)). Fu et al. is silent with respect to the subject claim aspects. As discussed *supra*, Fu et al. rather teaches that the communication device establishes a connection with a health monitor server. Thus, Fu et al. does not teach each and every element as set forth in the claim 1.

Hence, this rejection should be reversed.

Independent **claim 6** is directed towards a portable medical monitoring system includes a portable monitoring apparatus for medically monitoring to detect an occurrence of a predefined abnormal condition and a portable phone having an automatic dialer and configured to, upon detecting of said occurrence by said apparatus, activate the automatic dialer to call a phone number *of a phone belonging to a designated individual until the designated individual personally answers the call*, the phone being further configured to play a pre-recorded message *for the designated individual* on the call when the call is answered.

The final Office does not establish a *prima facie* case of anticipation with respect to claim 6 because the subject Office Action does not address the above-emphasized claim aspect. To establish a *prima facie* case of anticipation, the Office must explain how the rejected claims are anticipated by pointing out where the specific limitations of the claims are found in the prior art. *Ex Parte Naoya Isoda*, Appeal No. 2005-2289, Application 10/064,508 (Bd. Pat. App. & Inter. 2005). The goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity. (MPEP §706). Here, the Office did not address the subject claim limitation.

In addition, Fu et al. does not anticipate claim 6 because Fu et al. does not teach or suggest the above-emphasized claim aspect. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (See MPEP §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)). Fu et al. discloses that a communication device establishes a connection with a health monitor server, and the health monitor server contacts appropriate emergency medical personnel by, for example, calling 911 with the location of the patient using a pre-recorded message. The health monitor server is not a designated individual that personally answers calls, as required in claim 6. Moreover, the server provides location information for the monitored person via the pre-recorded message, and not for the 911 calling station. Thus, Fu et al. does not teach each and every element as set forth in the claim 1.

Accordingly, this rejection should be reversed.

Independent claim 12 is directed a portable medical monitoring method that includes medically monitoring, with a portable monitoring device, to detect an occurrence of a predefined abnormal condition; automatically, wirelessly and directly communicating, by a wireless transmitter attached to the device, the occurrence to a portable phone upon detection by the device of said occurrence, and making, by said phone, an emergency call upon receiving the communication *by dialing phone numbers stored in the phone, each of the phone numbers being associated with a phone belonging to a designated individual, until one of the designated individuals personally answers the call.*

The final Office does not establish a *prima facie* case of anticipation with respect to claim 12 because the subject Office Action does not address the above-emphasized claim aspect. To establish a *prima facie* case of anticipation, the Office must explain how the rejected claims are anticipated by pointing out where the specific limitations of the claims are found in the prior art. *Ex Parte Naoya Isoda*, Appeal No. 2005-2289, Application 10/064,508 (Bd. Pat. App. & Inter. 2005). The goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity. (MPEP §706). Here, the Office did not address the subject claim limitation.

In addition, Fu et al. does not anticipate claim 12 because Fu et al. does not teach or suggest the above-emphasized claim aspect. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (See MPEP §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)). Fu et al. does not teach or suggest that the communication device dials phone numbers stored in the device in which each of the phone numbers is associated with a phone belonging to a designated individual, as recited in claim 12. Thus, Fu et al. does not teach each and every element as set forth in the claim 1.

Therefore, this rejection should be reversed.

Claim 14, which depends from claim 12, includes claim aspects similar to those recited in claim 5. As such, the above discussion with respect to claim 5 applies *mutatis mutandis* to claim 14, and this rejection should be reversed.

Claims 15 and 18 respectively recite claim aspects similar to those recited in claims 1 and 12. As such, the above discussion with respect to claims 1 and 12 applies *mutatis mutandis* to claims 15 and 18, and the rejection of these claims should be reversed.

Claims 2-4, 7-11, 13, 16-17, 19 and 20-22 respectively depend from independent claims 1, 6, 12, 15, or 18, and are allowable at least by virtue of their dependencies. As such, the rejection thereof should be reversed.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-22 are distinguished patentably and non-obviously over the prior art of record, and reversal of the rejection of claims 1-22 is respectfully requested.

Respectfully submitted,



Anthony M. Del Zoppo, III Reg. No. 51,606
Driggs, Hogg, Daugherty & Del Zoppo Co.,
L.P.A.

38500 Chardon Road
Willoughby Hills, Ohio 44094
Phone: 1.440.391.5100
Fax: 1.440.391.5101

Direct all correspondence to:
Philips Intellectual Property & Standards
Customer Number 24737

VIII. CLAIM APPENDIX

1. A portable medical monitoring apparatus comprising:
a portable monitoring device for medically monitoring to detect an occurrence of a predefined abnormal condition; and
a wireless transmitter attached to the device and configured for automatically, wirelessly and directly communicating the occurrence to a portable phone upon detection by the device of said occurrence, the phone being configured to make an emergency call upon receiving the communication by dialing a phone number of a phone belonging to a designated individual.
2. The apparatus of claim 1, wherein the monitoring is of a subject, the device being attached to the subject during the monitoring.
3. The apparatus of claim 1, wherein the phone comprises a Bluetooth device, said apparatus further comprising a Bluetooth device configured for said communicating with the Bluetooth device of the phone.
4. The apparatus of claim 1, further comprising the phone, said phone having an automatic dialer, the phone being configured to, upon said receiving the communication, activate the automatic dialer to call the phone number.
5. The apparatus of claim 4, wherein the phone is further configured to play a pre-recorded message for the designated individual on the call when the call is answered.
6. A portable medical monitoring system comprising:

a portable monitoring apparatus for medically monitoring to detect an occurrence of a predefined abnormal condition; and

a portable phone having an automatic dialer and configured to, upon detecting of said occurrence by said apparatus, activate the automatic dialer to call a phone number of a phone belonging to a designated individual until the designated individual personally answers the call, the phone being further configured to play a pre-recorded message for the designated individual on the call when the call is answered.

7. The system of claim 6, wherein the apparatus is configured to communicate said detecting of said occurrence automatically, wirelessly and directly to the phone.

8. The system of claim 6, wherein the monitoring is of a subject, the device being attached to the subject during the monitoring.

9. The system of claim 6, wherein the phone comprises a Bluetooth device, said apparatus further comprising a Bluetooth device configured for communicating to the Bluetooth device of the phone said detecting of said occurrence.

10. The system of claim 6, wherein the phone further comprises a global positioning system (GPS) unit configured for determining a street map location of the phone, the phone being further configured to augment the pre-recorded message with said location.

11. The system of claim 6, wherein the pre-recorded message is a voice message and the playing of the message occurs on a voice channel.

12. A portable medical monitoring method comprising the steps of:
medically monitoring, with a portable monitoring device, to detect an occurrence of a predefined abnormal condition;

automatically, wirelessly and directly communicating, by a wireless transmitter attached to the device, the occurrence to a portable phone upon detection by the device of said occurrence; and

making, by said phone, an emergency call upon receiving the communication by dialing phone numbers stored in the phone, each of the phone numbers being associated with a phone belonging to a designated individual, until one of the designated individuals personally answers the call.

13. The method of claim 12, wherein the call making step further comprises the step of activating an automatic dialer in the phone to call the phone numbers.

14. The method of claim 12, wherein the call making step comprises the step of playing, by said phone, a pre-recorded message for the designated individual that answered the call on the call when the call is answered.

15. A portable medical monitoring method comprising:

medically monitoring, by a portable medical monitoring apparatus, to detect an occurrence of a predefined abnormal condition;

upon detecting of said occurrence by said apparatus, activating an automatic dialer in a phone to call phone numbers stored in the phone, each of the phone numbers being associated with a phone belonging to a designated individual; and

playing, by said phone, a pre-recorded message for the designated individual that answers the call on the call when the call is answered.

16. The method of claim 15, further comprising the step of automatically, wirelessly and directly communicating, by said apparatus, to the phone said detecting of said occurrence.

17. The method of claim 15, wherein the monitoring is of a subject, the device being attached to the subject during the monitoring.

18. A portable medical monitoring apparatus comprising:

a portable monitoring device for monitoring one or more medical conditions for the occurrence of one or more predefined abnormal conditions;

a portable communication device for receiving a signal from the portable monitoring device that one of the predefined abnormal conditions has occurred;

wherein the portable communication device relays the occurrence of the predefined abnormal condition by establishing a connection to selected emergency contact individuals and providing to the emergency contact individuals a notification of the occurrence of the abnormal condition that has occurred and a location of the portable monitoring device.

19. The portable medical monitoring apparatus of claim 18, wherein the location is defined by a global positioning system.

20. The portable medical monitoring apparatus of claim 18, wherein selected locations can be predefined with location labels.

21. The portable medical monitoring apparatus of claim 18, wherein the emergency contact that is closest to the location is notified first.

22. The portable medical monitoring apparatus of claim 18, wherein the notification comprises a telephone call to a phone of the emergency contact individuals including a selected, pre-recorded message.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None known to undersigned attorney/agent.